

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 19, 2016

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MASONRY INDUSTRY TRUST
ADMINISTRATION, INC., AN
Oregon corporation,

Plaintiff,

v.

D/J MASONRY LLC, a Washington
limited liability company,

Defendant.

No. 2:15-CV-0185-SMJ

**ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS**

Before the Court, with oral argument, is Defendant D/J Masonry LLC's Motion to Dismiss, ECF No. 5. Defendant asks the Court to dismiss the action for lack of subject matter jurisdiction under FRCP 12(b)(1). Having reviewed the pleadings and relevant authority, the Court is fully informed and denies Defendant D/J Masonry's motion.

Masonry Industry Trust and D/J Caulking entered into a collective bargaining agreement with D/J Caulking. ECF No. 1. In the agreement, D/J Caulking agreed to pay wages and make contributions to a trust fund on behalf of their employees. *Id.* Previously, Plaintiff filed suit against D/J Caulking under

1 the Employment Retirement Income Security Act of 1974 (ERISA) and obtained
2 judgement for contributions owed that covered the period of February 2008 to
3 August 2009. *Id.*

4 In the present action, Plaintiff seeks contributions from D/J Masonry owed
5 for a time period after the prior February 2008 to August 2009 judgement.
6 Plaintiff claims that Defendant D/J Masonry is bound by the labor agreement
7 because it is D/J Caulking's alter ego and/or successor company. The Defendant
8 moves to dismiss Plaintiff's complaint pursuant to FRCP 12(b)(1) for lack of
9 subject matter jurisdiction. Defendant argues that this action is not an ERISA
10 action, but a "veiled collection action based on 'piercing the veil,' i.e. 'alter ego.'" ECF No. 5 at 2. Defendant contends that Plaintiff is trying to get into federal
11 court with a collection action that is masquerading as an ERISA action. Thus
12 Defendant argues that without ERISA, Plaintiff's basis for federal jurisdiction is
13 lost.
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15 In support, Defendant cites *Peacock v. Thomas*, 512 U.S. 349 (U.S. 1996).
16 In *Peacock*, the Plaintiff filed an ERISA suit against his employer, and obtained
17 judgment. *Id.* at 866. After unsuccessfully attempting to collect on the
18 judgement, Plaintiff then sued an officer of his employer seeking to collect on that
19 judgment. *Id.* In his complaint against the officer, he asserted a claim for
20 "Piercing the Corporate Veil under ERISA and Applicable Federal Law." *Id.* The

1 district court allowed Plaintiff to pierce the veil and collect on the prior judgment.
2 *Id.*

3 The Supreme Court reversed the decision, holding that the district court
4 lacked subject matter jurisdiction over a new action in which a former employee
5 as judgement creditor sought to impose liability for money judgment on a person
6 not otherwise liable for the judgment. *Id.* at 869. The Court emphasized that
7 “piercing the veil is not itself an independent ERISA cause of action and cannot
8 independently support federal jurisdiction.” *Id.*

9 *Peacock* is unlike the present matter. In *Peacock*, the plaintiff alleged no
10 violation of ERISA in his second suit. His only argument was that the defendant
11 was liable for the first suit’s judgment because he was an alter ego of the first
12 suit’s defendant.

13 In the present matter, Plaintiff does not seek to hold D/J Masonry liable on
14 the judgment already obtained against David D/J Caulking. Plaintiff seeks to hold
15 D/J Masonry directly liable under ERISA for its alleged failure to pay fringe
16 benefit contributions under the labor agreement during a different time period.
17 Plaintiff only uses the alter ego/successor liability doctrine to allege that D/J
18 Masonry is bound by the labor agreement between it and D/J Caulking. Because
19 this Court has subject matter jurisdiction over ERISA actions, and Plaintiff’s
20 claims are based on ERISA violations, jurisdiction in this Court is proper.


1 The motion is denied.

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3 Accordingly, **IT IS HEREBY ORDERED:** Defendant D/J Masonry LLC's
4 Motion to Dismiss, **ECF No. 5**, is **DENIED**.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
6 and provide copies to all counsel.

7 **DATED** this 19th day of January 2016.

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9 SALVADOR MENDOZA, JR.
10 United States District Judge
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